IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 33865 of 2007(F)

AGAINST THE ORDER IN IA 3845/2007 IN OS.190/2007 OF ADDL.SUB COURT, PALAKKAD

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PETITIONER:

FATHIMA @ FATHIMABI,
W/O. LATE PALLATH HAMSA, ARAKURSI AMSOM AND DESOM,
MANNARKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.K.MUHAMMED SALAHUDHEEN
ADV. SRI. K.P. DANDAPANI (SR.)

RESPONDENTS:

AVARA HAJI,
S/O. KATTUKANDAN KUNHAMMED HAJI, KULUKKAILIYAD
AMSOM AND DESOM, OTTAPPALAM TALUK,PALAKKAD DIST.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 33865 OF 2007

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Dated this the 16th day of November, 2007.

J U D G M E N T

This writ petition is preferred against the order in I.A.3845/07 in O.S.190/07 of the Subordinate Judge, Palakkad. The petition is one for amendment of the written statement. The suit is one for specific performance of a contract on the basis of an agreement. The original contention of the defendant in the written statement is that while her son was traveling in a motor bike with papers which contained blank signed signature of the defendant, it had flew off from the bag and utilizing the same a document has been created and a suit has been instituted. Now, by the proposed amendment the defendant wants to alter the plea by stating that the son had monitory transaction and for the purpose of giving security etc. she had given blank signed papers and those papers had been utilized for the purpose of creating the document. It is also submitted that she came to

know about it only when the scribe was examined. The back ground of the case also would reveal that a tape recorded conversation is attempted to be utilized in the trial of the case and it is in consonance with the alleged recording of those statements now the proposed amendment is sought for. I am conscious of the fact that the Courts have to be liberal in allowing the amendment applications. It is equally conscious to understand that the Court has to test the bonafides of the amendment of the pleadings.

2. The learned counsel for the writ petitioner has cited before me the decision of the Apex Court reported in ***Rajesh Kumar Aggarwal v. Modi (2006 (3) KLT 192)*** wherein the Court held that where amendment should be necessary for the purpose of determining the real question in controversy between the parties it should be allowed if no prejudice is caused to the other side. It is also stated by the Apex Court that while considering whether an application for amendment should or should not be allowed the Court should not go into the correctness of falsity of the case in the

amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. But one of the important ingredient that has to be looked into is regarding the prejudice that will be caused to the other side. When the defendant enters appearance and on his or her own volition files a written statement and steps had been taken and evidence is let in, just because a witness gives a version different from the pleadings in the written statement, if amendments are to be allowed, it will change the whole complexion of the case and certainly it will cause prejudice because the plaintiff would have started his evidence on the basis of the original pleadings. Therefore, giving total go by to the original pleadings and attempting to substitute to it in order to establish the defence as per the evidence tendered by witnesses certainly will cause gross injustice to the other side and it will also create problem for the plaintiff. So applying the principles enunciated in the

decision of the Apex Court it has to be held that here is a case where substantial prejudice will be caused to the other side and secondly the application for amendment is without any bonafides and therefore I do not find any ground to interfere with the decision rendered by the Court below and therefore it is dismissed.

M.N. KRISHNAN, JUDGE.

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